

REMARKS

Applicant amended claims 29-31, 33, 35-44 and 46-59, and added new claims 62-68 to further define Applicant's claimed invention. Support for new claims 62-66 can be found at least in Figs. 6C, 7A, and 7B. No new matter has been added.

The Examiner rejected claims 29, 33, 34, 36, 37, 41, 50, 51, 54, and 56 under 35 U.S.C. § 102(b) as being anticipated by European Patent No. 0 392 076 A1 to Steffee ("Steffee"); rejected claims 29, 30, 33, 34, 36, 37, 41, 50, 51, 54, and 56 under 35 U.S.C. § 102(b) as being anticipated by European Patent No. 0 599 419 A2 to Schug et al. ("Schug"); rejected claims 30 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Steffee; and rejected claims 31, 32, and 35 under 35 U.S.C. § 103(a) as being unpatentable over Schug. Applicant respectfully traverses the rejections on the ground that neither Steffee nor Schug teaches or suggests each and every element of independent claim 29.

Independent claim 29 recites a method comprising "forming an opening across a height of the disc space and into a portion of each of the adjacent vertebral bodies, the opening in the portion of each of the adjacent vertebral bodies being at least in part curved" and "inserting the implant into the opening." Neither Steffee nor Schug teach or suggest forming an opening across the height of the disc space, then inserting the implant into the opening formed. Accordingly, Applicant submits that the Examiner's rejections of independent claim 29 and claims 30-38, 41, 50, 51, 54, and 54, dependent from independent claim 29, or claims dependent therefrom, have been overcome.

The Examiner rejected claims 39, 40, 42-48, 52, 53, 55, and 57-59 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Steffee or Schug et al. and U.S. Patent No. 5,192,327 to Brantigan ("Brantigan"); and rejected claims 38 and 49 under 35 U.S.C. § 103(a) as being unpatentable over Schug and Brantigan in view of WO 98/48738 A1 to Crozet ("Crozet"), via related U.S. Patent No. 6,855,168. Applicant respectfully traverses the rejections on the ground that the proposed combination does not teach or suggest each and every element of independent claim 39.

Independent claim 39 recites a method comprising "forming at least one opening across a height of the disc space and into a portion of each of the adjacent vertebral bodies, the at least one opening in the portion of each of the adjacent vertebral bodies being at least in part curved" and inserting each implant into the at least one opening formed. No such method is taught or suggested by the proposed combination. Accordingly, Applicant submits that the Examiner's rejections of independent claim 39 and claims 40, 42-49, 52, 53, 55, and 57-59, dependent from independent claim 39, or claims dependent therefrom, have been overcome.

Applicant submits that independent claims 29 and 39 are patentable and that claims 30-39, 40-59, and 62-68, dependent from one of independent claims 29 and 39, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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